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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: APR 15 2004

IN RE:

Applicant:

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 210 of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

Self-represented

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. This decision was based on adverse information relating to the applicant's claim of employment for [REDACTED] at Saikhon Farms.

On appeal, the applicant asserts that, during the twelve-month qualifying period ending May 1, 1986, he actually worked for several foremen, but only provided supporting documentation from one of them since he was unable to locate the others. In support of this assertion, the applicant submits evidence indicating that he also performed qualifying agricultural employment for another foreman [REDACTED] during the period in question.

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Act and not ineligible under 8 C.F.R. 210.3(d). 8 C.F.R. 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. 210.3(b).

On the Form I-700 application, the applicant claimed employment as follows for [REDACTED]: 37 man-days tapping onions at the Saikhon Farm in Imperial County, California from April 1985 to June 1985; 58 man-days picking melons at Jerome Farms in Imperial County from June 1985 to August 1985; and 16 man-days picking cucumbers at the El Monte Farm from September 1985 to October 1985.

In support of the claim, the applicant submitted a Form I-705 affidavit along with two supporting employment verification affidavits, all of which were signed by [REDACTED].

Subsequently, in the course of attempting to verify the applicant's claimed employment, the director acquired information which contradicted the applicant's claim. Specifically [REDACTED] payroll clerk of the Saikhon Farm, stated on November 30, 1988 that, according to her firm's records, the applicant's purported foreman [REDACTED] had worked neither as a foreman nor as a farm labor contractor for her company but, instead, as a *laborer* for only *two days* during the month of June 1985. As a laborer who performed no more than two days of employment for the Saikhon Farm in 1985, Mr. [REDACTED] could in no way have corroborated the applicant's claimed 37 man-days of employment at that farm.

On November 15, 1991, the applicant was advised in writing of that adverse information, and also that the existence of Jerome Farms and El Monte Farm could not be verified. The applicant was granted thirty days to respond. The record contains no response from the applicant to the director's notice. The director concluded the applicant had not overcome the derogatory evidence, and on January 10, 1992, denied the application.

On appeal, the applicant asserts that, during the twelve-month qualifying period ending May 1, 1986, he actually worked for several foremen, but only provided supporting documentation from one of them since he was unable to locate the others. In support of this assertion, the applicant now submits a Form I-705 affidavit along with a corresponding employment affidavit from another alleged foreman, [REDACTED] indicating that, from January 2, 1986 to March 30, 1986 and from April 1986 to May 1986, the applicant performed a total of 99 man-days of qualifying agricultural employment at the Manuel Y. Rodriguez Farm.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. § 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, i.e., if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible. *United Farm Workers v. INS*, Civil No. S-87-1064-JFM (E.D. Cal.).

An applicant raises serious questions of credibility when asserting an entirely new claim to eligibility which was not initially put forth on the application. In such instances, Citizenship and Immigration Services (CIS) may require credible evidence to support the new claim as well as a complete plausible explanation concerning the applicant's failure to advance this claim initially. The instructions to the application do not encourage an applicant to limit his claim; rather, they encourage him to list multiple claims as they instruct him to show the most recent employment first.

The applicant's claim to have been employed by [REDACTED] under foreman [REDACTED] was first brought to CIS's attention by the applicant at the appellate level. At the time of filing, the applicant did not reference this employment on the Form I-700 application. Nor did he submit corroborating materials to document the alleged employment with [REDACTED]. However, the very purpose of the Form I-700 application is to allow the applicant to claim the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker. The instructions to the application do not encourage an applicant to limit his claim; rather, they encourage him to list multiple claims as they instruct him to show the most recent employment first. On appeal, the applicant asserts he actually worked for several foremen, but only provided supporting documentation from one of them since he was unable to locate the others at the time he completed his application. If this were indeed the case, however, the applicant does not explain why he could not have simply included the information regarding the *other* alleged foremen on his original application and then *subsequently* proffered the desired employment documentation once obtained.

Larger issues of credibility arise when an applicant claims employment which is called into question through an investigation, and later attempts to establish eligibility with a *different* employer, heretofore never mentioned to the Service. The applicant's advancement of a new employment claim does not address, resolve, or diminish the

credibility issues raised by the adverse evidence as regards the applicant's initial employment claim for [REDACTED]. Therefore, the applicant's overall credibility remains in question. For this reason, the applicant's new claim of employment for [REDACTED] under foreman [REDACTED] will not serve to fulfill the qualification requirements necessary for status as a special agricultural worker.

In light of the derogatory information regarding the applicant's claimed employment for Antonio Romero, the applicant has failed to credibly establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.